

(1962) 11 MP CK 0001
In the Madhya Pradesh High Court
Case No : First Appeal No. 17 of 1958

Ratanlal

APPELLANT

Vs

Firm Mangilal Mathuralal of Indore and Another

RESPONDENT

Date of Decision : 26-11-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107
Contract Act, 1872 — Section 222, 23, 24, 30, 62
Evidence Act, 1872 — Section 101, 102, 103, 104

Citation : AIR 1963 MP 323 : (1963) JLJ 218

Hon'ble Judges : P.K. Tare, J;H.R. Krishnan, J

Bench : Division Bench

Advocate : K.A. Chitale, for the Appellant; S.D. Sanghi and B.G. Waghmare, for the Respondent

Final Decision : Dismissed

Judgement

Tare, J.—This appeal is by the plaintiff against the decree, dated, 15-1-1958, passed by Shri K. G. Deshmukh Civil Judge, Class I, Indore, in Civil Suit No. 10 of 1952, dismissing the plaintiffs suit for recovery of an amount of Rs. 651178/- as principal and Rs. 1418/4/- as interest, as also Rs. 12/6/6 as notice charges, total Rs. 7942/2/6.

2. The appellant's case was that the second respondent, Tilokchand, who is the manager of the joint Hindu family firm of Mangilal Mathuralal, had cash transactions of loans with the plaintiff, which had been entered in the account books and also signed by Tilokchand from time to time. Therefore, the said amount was due on cash loans taken by the second respondent, Tilokchand in his capacity as manager of the joint family firm and therefore, not only he himself was personally liable, but also the joint family firm of "Mangilal Mathuralal" was liable for the suit claim.

3. The respondents' defence was that the transactions had not been entered into by Tilokchand on behalf of the joint family firm. If at all, the transactions were in

his individual capacity. Therefore, the joint family firm, in any case, was not liable at all. In their special pleadings, the respondents pleaded that the amounts were not due on cash loans, but on forward transactions in oil seeds, which were not only of a wagering nature and, therefore, prohibited by Sections 30, 30-A and 30-B of the Indore Contract Act (No. II of 1915), but also were illegal as being prohibited by the Indore Oil Seeds (Forward Contracts Prohibition) Order, 1943 and, therefore, the consideration being either void or illegal, the plaintiff could not recover any amount on such void or illegal transactions.

4. The learned Judge of the Trial Court dismissed the plaintiff's suit in its entirety holding that all the six transactions as entered in the account books were illegal and, therefore, no amount could be recovered by any of the parties, as the transactions themselves were prohibited by the provisions of the Indore Oil Seeds (Forward Contracts Prohibition) Order, 1943.

5. The learned counsel for the plaintiff appellant urged that even if it were to be assumed that the view of the Trial Judge on the questions of law might be correct, the learned Judge at any rate, erred in concluding that all transactions as entered in the account books on six occasions were void or illegal contracts. It was urged that, at the most, the transaction as evidenced by the account book entry (Ex. P-8) could alone be held to be a prohibited transaction, while "prima facie" all other transactions were cash transactions as disclosed from the account books and, therefore, a decree should have been passed in respect of the other five transactions. It was urged that the finding of the Trial Judge is based on mere suspicion on account of the two entries, namely an entry of Rs. 1000/-, dated 11-1-1946 (Ex. P-8) and another entry of Rs. 19/-, dated, 12-4-1946 (Ex. P-11). It was contended that these two entries stand on a different footing and, therefore, they should not be confused with the other four entries, which are certainly on cash transactions and regarding which a decree can be passed, as they cannot be said to be wagering contracts having void consideration, or illegal contracts, as being prohibited by the Indore Oil Seeds (Forward Contracts Prohibition) Order, 1943.

6. in this connection, we are concerned with the following entries made in the account books of the appellant :

(i) Rs. 700/-

dated, 2-1-1946 (Ex. P-6),

(ii) Rs.2200/-

dated, 6-1-1946 (Ex. P-7),

(iii) Rs. 1000/-

dated, 11-1-1946 (Ex.P-8),

(iv) Rs. 1000/-

dated, 27-1-1946 (Ex. P-9),

(v) Rs. 1140/-

dated, 5-3-1946 (Ex.P-10), and

(vi) Rs. 19/-

dated, 12-4-1946 (Ex.P-11).

Total: Rs. 6059/-.

In addition, the appellant claimed Rs. 452/8/- towards interest after giving credit for the repayments said to have been made by the second respondent. The total claim was Rs. 6511/8/- and further interest and incidental charges, grand total Rs. 7942/2/6.

7. The learned counsel for the appellant urged that the finding of the Trial Judge that all these items mentioned above were on account of prohibited transactions in linseed was based more on suspicion, and not on the material on record. It was pointed out that the entries in the account books "prima facie" made recitals in favour of the plaintiff. The only entries which might create suspicion and would indicate the existence of prohibited transactions in linseed were the entry of Rs. 1000/, dated, 11-1-1946 [Ex. P. 8) and the entry of Rs. 19A, dated, 12-4-1946 (Ex. P-11). The said entries are as follows:

^^1000 eFkjkykyth ekaxhykyth eYgkjxat okyk ds ukosZa 1000 jksdMh gLrs vylh dh dyjhax esa gLrs eksguyky pqUuhyky dks iksl lqnh 3 jkst fnuk-n&fryksdpan- ?,dth- ih- 8?] ?,Dth- ih- 11?

19 eFkjkyky ekaxhyky eYgkjxat okykl 19 jksdMh gLrs lsy esa dk ckdh jg;k lks ukosa ekaM;k**

It was on the basis of the said two entries that the Trial Judge held that the transactions disclosed by the different entries mentioned above were not cash transactions of loan, but were towards losses in prohibited forward contracts in oil seeds. Therefore, the learned Judge concluded that the other four entries also were in respect of prohibited transactions, as they disclosed the modus operandi of the plaintiff in making entries in the account books by describing them as cash transactions, although they were in fact towards the losses suffered in illegal transactions.

8.It is true that at least in respect of the entries vide Ex. P-6, Ex. P-7, Ex. P-9 and Ex. P-10, the recitals in the account books are in favour of the appellant. The transactions are described to be cash transactions. All the entries except the one relating to Rs. 49/- (Ex. P-11) have been counter-signed by the second respondent, Tilokchand. On account of these two factors a very heavy burden lay on the respondents to establish that the entries were in respect of prohibited transactions in linseed, and not cash transactions. Therefore, it would be

necessary to examine whether the respondents have "discharged this burden, as the initial presumption is clearly in favour of the appellant. The entry, dated, 11-1-1946 (Ex. P-8) clearly recites the amount to be towards linseed transactions which the appellant paid to Mohanlal Chunnilal or he became liable for that amount to him. Therefore, that entry is clearly in favour of the respondents. Similarly, with regard to the entry of Rs. 19/-, dated, 12-4-1946 (Ex. P-11), the same has been found to be a bogus entry, as there was no picnic or a party held by the parties at any time. The amount was said to be a contribution due from the second respondent towards that picnic party. The amount was said to have been advanced in cash. It was on account of these two entries that the Trial judge concluded that the description "Rokadi" (cash) was merely a misdescription in order to describe losses suffered in forward transactions of oil seeds.

9-14. (After summarising the oral evidence His Lordship proceeded :) On account of the two suspicious entries in the account books (Ex. P-8) and (Ex. P-11), as also the half-hearted denial of the appellant's witnesses in answer to the positive assertion of the second respondent, the learned Judge of the Trial Court cannot be said to have acted erroneously or illegally in coming to the conclusion upon an assessment of the entries, evidence and circumstances on record that the entries in the account books were fictitious and represented losses suffered in forward contracts in linseed transactions which were prohibited by the provisions of the Indore Oil Seeds (Forward Contracts Prohibition) Order, 1943. The view taken by the Trial Judge cannot be said to be founded on suspicion alone; but it is based on a consideration of the entire material on record, coupled with the circumstances brought out on record. That view was possible upon the material on record. Under the circumstances, it is not the task of the Appellate Court to reassess the evidence for itself and to come to its conclusion in the absence of a patent illegality demonstrable from the record. We may only observe that the view taken by the Trial Judge upon the material on record was a legally plausible view and there is no occasion to reverse the findings of the Trial Judge which have been given after due consideration of the material on record. The mere fact that upon a reassessment of the evidence on record, another conclusion might be possible cannot be a ground for the Appellate Court to reverse the findings of the Trial Judge, who had the advantage of forming his own impression about the witnesses. Even if the Trial Court may not have had an opportunity of watching the demeanour of all the witnesses, the finding, if it is after due consideration of the material on record, is entitled to due weight, unless a demonstrable error in the method of assessment of the evidence on the part of the Trial Judge is established at the appellate stage. To conclude, we are of opinion that there is no occasion to interfere with the finding of the Trial Judge about the nature of the transactions as represented by the six entries made in the account books of the appellant as per Ex. P-6 to Ex. P-11.

15. The question whether these were transactions of a wagering nature and whether they were individual transactions entered into by the second respondent

on his own behalf or on behalf of the firm, the first respondent, might be necessary after we consider the question of law whether the consideration of the suit transactions was rendered unlawful and whether on that account the appellant could not recover the amount of losses suffered in those transactions. A consideration of those questions may be necessary if we uphold the appellant's contention on the question of law, but the same may become unnecessary if we decide the question of law against the appellant.

16. Coming to the first question whether the suit transactions in forward contracts of linseed were unlawful or illegal as being in contravention of the provisions of the Indore Oil sSeeds (Forward Contracts Prohibition) Order, 1943; and whether rights and liabilities could not be enforced on the basis of such contracts, they being opposed to public policy u/s 23 of the Indian Contract Act, we observe that we have already affirmed the finding of the trial Judge that the suit transactions as evidenced by Ex. P-6 to Ex. P-II were all in respect of forward contracts in oil seeds and in contravention of the provisions of the Indore Oil Seeds (Forward Contracts Prohibition) Order, 1943. In exercise of powers conferred by clause 5 of the said Order of 1943, the Holkar Government had issued a notification exempting certain types of contracts from the operation of the said Order in the following terms:

"Forward contracts for Castorseed, Cottonseed, Sesa-mum (Till or Jinjili), Groundnut, Linseed, Mustardseed or torjaseed, of specific qualities or types and for specific delivery at a specified price, delivery orders, railway receipts or bills of lading against which contracts are not transferable to third parties."

The case as put up by the appellant did not allege that the suit contracts were within the ambit of exemption granted by the said notification. It is true that the burden heavily lay on the respondents to establish the illegal nature of the contracts. But, the burden was certainly on the plaintiff to plead an exemption which took out the contracts from the operation of control Orders. The appellant never pleaded any such exemption, nor was it the appellant's case that delivery was intended at any time in respect of specific quality of linseed. Consequently, we would affirm the conclusion of the Trial Judge that the appellant had failed to bring his case within the scope of the exemption granted by the notification, dated, 29-12-1943; and as such, they were contrary to a specific provision of the law and, therefore, the consideration was rendered unlawful or illegal "on that account.

17. It is also to be noted further that another Order, namely, Indore Vegetable Oil and Oilcakes (Forward Contracts Prohibition) Order 1943 published in the Holkar Government Gazette, dated, 7-5-1945 Part I page 160, was in force, which prohibited! all forward contracts in the commodities mentioned in the schedule. The notification granting exemption was in similar terms, whereby contracts about supply of specific commodities for delivery at a specific time alone were excluded. The suit contracts could not be said to be covered by the exemption granted by the said notification issued under the Indore Order of 1945.

18. At this stage, we might note that there are two decisions of the Supreme Court, although they do not fully cover the points involved in the present case directly. It is true that the Supreme Court case of *Kishan Lal and Another Vs. Bhanwar Lal*, , does not specifically lay down that the contracts, if they had been made in Rajasthan, would have been rendered illegal. The contracts in that case had been made in the Holkar State where they were not prohibited and were not rendered illegal. It was under those circumstances that their Lordships of the Supreme Court held that contracts were legal, as they were made in the Holkar State. At the most, an indirect suggestion might be read in the observations of their Lordships of the Supreme Court that if the contracts had been made in Rajasthan where they were specifically prohibited, they might have been rendered illegal. It is only by implication that the converse of the proposition laid down by their Lordships of the Supreme Court might be indirectly read. But, their Lordships have not laid down any positive proposition, which was unnecessary for the purposes of that case.

19. The case of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, , did not concern an unlawful or an illegal contract, but a wagering contract where the consideration of the agreement becomes void. In this case, their Lordships laid down that such a contract is not rendered unlawful or illegal by any provision of the Act; but the consideration becoming void, the contract cannot be enforced in a Court of law where it is the basis of the cause of action. But, if another liability is created by a novation of the contract or if the contract having void consideration is merely collateral and not the subject-matter of the suit, the rights and liabilities of the parties as per a novation can certainly be enforced in a Court of law. We shall have again to consider this case at some length in context with the point about non-enforcibility of the contract on account of its wagering nature.

20. The instant question was considered by a Division Bench of this Court in *Haji Habib v. Bhikamchand Jankilal Shop* ILR (1954) Nag 514 : (AIR 1954 Nag 306), although it appears that the consideration of the question was not necessary for the decision of that case. So far as the ultimate conclusion was concerned, Hidayatullah, J. (as he then was} and R. K. Rao J. agreed. But the discussion of the instant question in that case was more or less of an academic nature when the two learned Judges expressed differing opinions. Hidayatullah J. (as he then was) expressed the opinion that even though an earlier contract or a collateral transaction might be illegal, if the liability had been converted into another liability by a novation of the contract, the same could be enforced in a Court of law. Rao J. definitely expressed the opinion that where a contract was unlawful or illegal as being prohibited by a specific provision of the statute, it could not be enforced, although the parties might have entered into a novation of the contract on the basis of such unlawful or illegal consideration. In the opinion of the learned Judge, the fact that the illegal contract might be a collateral transaction was also not material. However, in view of the differing opinions by the learned Judges, the matter is still open for examination.

21. in the other Division Bench case of this Court, namely, Shop Baboolal Mangilal and Another Vs. Firm Mangilal Balkishan and Others, , decided by Hidayatullah C. J. (as he then was) and Choudhuri J., the decision centred round on the wording of exemption as per the notification under the Oil Seeds (Forward Contracts Prohibition) Order 1943, which had been issued by the Central Government u/s 81 of the Defence of India Rules, and which was in terms similar to the provisions of the Indore Order of 1943. However, in this case it was assumed by the learned Judges constituting the Division Bench that any contract on account of a contravention of the Control Order was rendered illegal and, therefore, no party could recover anything from the other. The point was not specifically raised or decided. Reference was also made to the earlier case of ILR (1954) Nag 514 : AIR 1954 Nag 306 (supra). This case, in our opinion, does not conclude the instant question involved in the present case. There can be no doubt that if an illegal contract be the basis of the cause of action, a suit cannot be maintained in a Court of law. The question, however, arises with reference to a collateral illegal contract, where rights and liabilities have been converted into rights and liabilities of another nature, or where the illegal contract is substituted by a novation giving rise to rights and liabilities of another nature. In this connection, it is to be noted that differing views have been expressed by the different High Courts and the matter is not concluded either by any decision of their lordships of the Supreme Court or any decision of this Court, which might be considered to be binding on this Division Bench.

22. A Division Bench of the Madras High Court consisting of Govinda Menon, J. [as he then was) and Basheer Ahmed Sayeed, J. In Hussain Kasam Dada, represented by Sakoor Dawood, agent and Another Vs. Vijayanagaram Commercial Association (Regd.) and Another, , held that a collateral illegal contract or an earlier illegal contract, in spite of a novation would, still remain illegal and a law Court would decline to grant any relief to any one of the parties even in respect of such a collateral contract, or an earlier illegal contract which is the basis of the suit contract and on which a cause of action may be founded. The said view has been adopted by a Division Bench of the Andhra Pradesh High Court consisting of Chandra Reddy and Section Qamar Hasan, JJ. in Peddi Virayya Vs. Doppalapudi Subba Rao and Another, , although the Madras case was not cited in that case.

23. A similar view appears to have been taken by a Single Bench consisting of P. T. Rama Nayar J. In Eastern Mercantile Bank Ltd. Vs. N.T. Philip, , where the learned Judge held that a mortgage executed for a certain sum of money misappropriated in order to stifle a prosecution would be rendered illegal, as the mortgage itself would become void u/s 24 of the Contract Act. It is a short judgment and does not contain any detailed reasons; but the learned Judge has followed the principle that any contract entered into in order to stifle a criminal prosecution would be rendered illegal and, therefore, not enforceable in a Court of law.

24. However, it appears that a contrary view has been taken by a Division Bench of the Rajasthan High Court consisting of Sarjoooprasad C. J. and C. B. Bhargava J. In *Hagami Lal Ram Prasad, a firm and Others Vs. Bhuralal Ram Narain and Others*, . In the said case, two questions were raised whether the contract was of a wagering nature and it being collateral to the rights and liabilities giving rise to the cause of action could be enforced on that account. The learned Judges constituting the Division Bench held that any collateral contract of a wagering nature would not render the suit contract or the cause of action based on another liability illegal; but at the most, the consideration being void, the other liability could be enforced. In this connection, the earlier Privy Council case of *Sobhagmal Giamal v. Mukundchand Balia* AIR 1926 P C 119 and another case of the Rajasthan High Court, namely, *Surajmal and Others Vs. Doongarmal and Others*, , were relied on. It appears the case of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, , which settles the controversy once for all, was not brought to the notice of the learned Judges. The learned Judges also referred to the Supreme Court case of *Kishan Lal and Another Vs. Bhanwar Lal*, on the basis of which the learned Judges held that any matter collateral to the forward contract which might be illegal as being prohibited by the provisions of the Control Order of 1945 would be enforceable in a Court of law, as it would be on the basis of rights and liabilities of a principal and agent u/s 222 of the Contract Act. We feel that the learned Judges of the Division Bench of Rajasthan High Court have extended the principle of the Supreme Court case of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, relating to a wagering contract to a case of an illegal contract. In our opinion different considerations will have to be applied to the two different types of cases involving a void contract and an illegal contract. The distinction has been well set out in the Supreme Court case of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, . But we are unable to read anything in the observations of their Lordships of the Supreme Court in the case of *Kishan Lal and Another Vs. Bhanwar Lal*, that the principle applicable to a wagering contract can be applied to cases of illegal contracts where the consideration is rendered unlawful and is not merely void. It was on account of this action of the Division Bench in extending the principle of a wagering contract to an illegal contract that the learned Judges of the Rajasthan High Court took a contrary view. We are unable to subscribe to that view; and we are of opinion that the view as taken by the two Division Benches of the Madras and the Andhra Pradesh High Court in *Hussain Kasam Dada, represented by Sakoor Dawood, agent and Another Vs. Vijayanagaram Commercial Association (Regd.) and Another*, and *Peddi Virayya Vs. Doppalapudi Subba Rao and Another*, would be the correct view, which is in consonance with the principles laid down by their Lordships of the Supreme Court in the cases of *Kishan Lal and Another Vs. Bhanwar Lal*, and *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, .

25. Similarly, the other Division Bench case of the Rajasthan High Court, namely, *Hazarimal Kochnaji Vs. Khemchand Maggaji*, , is distinguishable, inasmuch as in that case the agreement was about payment by the plaintiff to a Panchayat at

the instance of defendant to remove a ban imposed upon him by his caste men. Therefore, the liability of the defendant to reimburse arose in respect of the amount paid. Ultimately, the ban was not removed. The learned Judges held that Section 145 of the Contract Act was not attracted; but it was a simple case where the plaintiff had advanced money for the doing of a thing at the instance of the defendant to certain persons and his claim was for reimbursement of the amount from the defendant. The learned Judges expressed the opinion that it was the case of an agency and the plaintiff could recover the amount from the defendant, if it was found that he was entitled to reimbursement. Reliance was placed on the Supreme Court case of *Kishan Lal and Another Vs. Bhanwar Lal*, . The case of *Thunki v. Bajirao* AIR 1956 Nag 160, decided by Kidayatullah C. J. (as he then was) was distinguished. In our opinion, this Division Bench case also would be distinguishable, as it does not involve a case of an illegal contract where the consideration is rendered unlawful.

26. At this stage, we might refer to the case of AIR 1956 Nag 160 (supra) decided by Kidayatullah C. J. (as he then was) where the question for consideration was whether a debt advanced for an immoral and illegal purpose, such as obtaining of a divorce, could be recovered by the plaintiff after the "illegal purpose had been carried out. The learned Chief Justice opined that Section 23 of the Contract Act would preclude a plaintiff from recovering any amount advanced for such an illegal or immoral purpose. In our opinion, the view expressed by Kidayatullah C. J. is more in consonance with the view of the Division Benches of the Madras and the Andhra Pradesh High Courts in *Hussain Kasam Dada*, represented by *Sakoor Dawood*, agent and *Another Vs. Vijayanagaram Commercial Association (Regd.) and Another*, and *Peddi Virayya Vs. Doppalapudi Subba Rao and Another*, . We have already indicated that we are unable to accept the view of the Division Bench of the Rajasthan High Court in *Hagami Lal Ram Prasad, a firm and Others Vs. Bhuralal Ram Narain and Others*, .

27. Our reasons for not accepting the view of the Rajasthan High Court and for following the view of the Madras and the Andhra Pradesh High Courts are as follows:

(a) Their Lordships of the Supreme Court in the two cases mentioned above have distinguished the cases of contracts where the consideration becomes void and other contracts where the consideration is unlawful or illegal. Regarding the former, their Lordships have clearly laid down that they cannot be the basis of an action to be maintained in a Court of law, but this would not affect any collateral transaction which might be of a wagering nature, or any earlier transaction of a wagering nature, if there has been a novation and the rights and liabilities of the parties are different. Therefore, according to their Lordships the mere fact that the earlier or the collateral contracts might be void cannot preclude a plaintiff from maintaining an action on a novated contract which is perfectly valid and legal. The two Supreme Court cases do not conclude the matter whether a collateral or an earlier illegal contract can be the basis of an

action in a Court of law after a novation of the contract. We feel that Court of law, which is essentially a medium of administration of Justice, should decline to enforce a perfectly innocent and legal contract Where it arises out of a collateral illegal contract or an immoral contract or any legal contract which has for its basis an earlier illegal or immoral contract, in spite of the fact that the parties may have entered into a novation. But if there is a direct connection between a fresh contract after novation and the earlier illegal contract or the earlier collateral contract, the novated contract would still continue to be Illegal or immoral and the Court would refuse to enforce the same, having in view the provisions of Section 23 of the Contract Act as the contract would be illegal as being in contravention of a specific provision of the statute where the very consideration would continue to be unlawful in spite of a novation. The mere fact that the illegal or the immoral purpose might have been carried out should be no consideration for extending the principle of a wagering contract to a case of an illegal or an immoral contract. Therefore, we are unable to subscribe to the view that the principle of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, can be extended to the case of an illegal or an immoral contract. At least, we are unable to read anything to that extent in the Supreme Court case of *Kishan Lal and Another Vs. Bhanwar Lal*, .

(b) The reasoning of the learned Judges of the Division Benches of the Madras and the Andhra Pradesh" High Courts is to be preferred to the reasoning of the learned Judges of the Rajasthan High Court as the implications of the two Supreme Court decisions cannot be read as extending the principle of the case of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, to cases of illegal contracts. What the learned Judges of the Rajasthan High Court have done is to extend that principle to cases of illegal contracts. In our opinion, an extension of that principle to cases of illegal contracts, would militate against the observation of their Lordships of the Supreme Court in *Kishan Lal and Another Vs. Bhanwar Lal*, .

(c) in the case of an illegal contract, both parties being in the position of guilty persons the Court should refuse its assistance to any one of them on the basis of an illegal contract or on the basis of a novated legal contract, which has for its basis an earlier or an collateral illegal contract. The Court ought to apply the principle of *part delicto* to such cases and should refuse to assist any one of the parties. To do otherwise would be to render Section 23 of the Contract Act nugatory.

28. Lastly we may mention a Full Bench case of this Court decided by Dixit, J. (as he then was), Khan, J. and Shrivastava J. in *Gulabchand Gambhirmal Vs. Kudilal Govindram and Another*, , where the question was whether a contract though in itself lawful would be rendered void, if the fulfilment of the same involved violation of a law or it offended against public policy. The conduct of some partners of the managing agency of a Cotton Mill was the subject-matter of criticism and controversy with the result that the Board of Directors of the Mill appointed an enquiry committee consisting of three persons to enquire into the

charges levelled against Govindram Sakserta. The plaintiff was one of the members of the Committee. While the proceedings of the enquiry committee were still going on, the plaintiff, namely, Gulabchand Gambhirmal entered into an agreement with Govindram Sek-saria, whereby the latter agreed to sell his 2 1/2 annas share in the managing agency to the plaintiff thereby making the plaintiff a partner with him. Govindram Seksaria failed to implement the agreement and, therefore, the plaintiff Gulab-chand Gambhirmal filed a suit for specific performance of the contract of sale against the heirs of Govindram Seksaria. In defence, the agreement was attacked as being void and unenforceable; firstly on account of the fact that there was a conflict between the interest and duty of the plaintiff and the share offered was in the nature of a bribe. Therefore, the question arose whether the agreement was opposed to public policy and hence unenforceable u/s 23 of the Contract Act. It is to be noted that the agreement by itself was perfectly legal and innocent, but the carrying out of the same involved a violation of the law or public policy, inasmuch as it amounted to offering a bribe for a favourable report in the enquiry proceedings. Therefore, although the agreement itself was not rendered unlawful or illegal, its carrying out involved a violation of public policy. The object of the agreement was considered to be opposed to public policy. It was for that reason that the Division Bench of the Madhya Bharat High Court, as also the Full Bench of this Court held that the agreement being rendered unlawful u/s 23 of the Indian Contract Act could not be enforced in a Court of law and, therefore, specific performance of the contract of sale of shares was refused. We may only observe that the reasoning of the learned Judges constituting the Full Bench would accordingly assist us in our conclusion that if unlawfulness or illegality is even indirectly connected with a perfectly innocent and legal contract, the contract is rendered unlawful or illegal and the Court would refuse to enforce such a contract, having in view the provisions of Section 23 of the Indian Contract Act, as giving effect to a perfectly legal contract, which is tainted by a collateral illegality or an earlier illegality would render the provisions of Section 23 of the Indian Contract Act nugatory. This result the Court has to avoid in all eventualities.

29. Therefore, we are of opinion that the contracts in the present case were illegal, as the consideration of the same was unlawful. The said contracts could not be enforced although the claim of the plaintiff-appellant might be on the basis of his right as an agent against his principal. We are unable to subscribe to the view that Section 222 of the Indian Contract Act can be invoked in favour of the appellant in the present case. Therefore, we are of opinion, that the appellant's suit was rightly dismissed by the Trial Judge.

30. It is not necessary for us to decide the other question whether the contract being of a wagering nature could not be enforced in a Court of Law. In our opinion, there is nothing more to be said except to follow the Supreme Court case of Gherulal Parakh Vs. Mahadeodas Maiya and Others, . From that point of view, there can be no doubt that although a wagering contract cannot be the

basis of a cause of action in a Court of law, if the wagering contract be a collateral one or if the rights and liabilities of the parties stand altered by a novation, the contract although of a wagering nature in its origin can be enforced in view of the altered rights and liabilities. That is the implication of the dictum laid down by their Lordships of the Supreme Court in the said case.

31. Under the circumstances that we are dismissing the appellant's suit, it is not necessary for us to go into the question whether the transactions had been entered into by the second respondent in his individual capacity or in his capacity as a "de jure" or a "de facto" manager of the joint Hindu family firm of "Mangilal Mathuralal". The finding of the Trial Judge was that the transactions were by the second respondent in his individual capacity and not in his capacity as manager of the joint Hindu family firm. We do not think it necessary to reverse that finding. Consequently, we would affirm the same, although it may be unnecessary in view of the fact that the appellant's suit is liable to be dismissed on the ground that the contract being illegal on account of unlawful consideration, he cannot maintain an action in a Court of law.

32. As a result, this appeal fails and is dismissed. As regards costs, we would award the respondents their costs following the view of the two Division Bench cases of this Court, namely *Shop Baboolal Mangilal and Another Vs. Firm Mangilal Balkishan and Others*, and ILR (1954) Nag 514 : (AIR 1954 Nag 306). The costs of the Trial Court shall be borne as directed by that Court. Counsel's fee in this Court according to schedule or certificate, whichever be less.